

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BLAINE ANTHONY THOMAS
BURGER,

Defendant.

CR 22–32–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 25.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Burger is charged with two counts of production of child pornography, in violation of 18 U.S.C. § 2251(a) (Counts I–II), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B) (Count III), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court

accept Burger's guilty plea as to Count I after Burger appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 25) is ADOPTED in full.

IT IS FURTHER ORDERED that Burger's motion to change plea (Doc. 17) is GRANTED.

IT IS FURTHER ORDERED that Burger is adjudged guilty as charged in Count I of the Indictment.

DATED this 31st day of March, 2023.



Dana L. Christensen, District Judge
United States District Court